to the words 'in the event that the supplier fails ...' which otherwise would be mere surplusage, but it in no way imposes an extravagant demand upon the bank. A beneficiary may seek, honestly or dishonestly, to apply a performance bond to the wrong contract, and the need to inform the bank of the true basis upon which he is making his demand may be very salutary. Moreover, the desire for an extension of the performance bond may, on occasions, be due to the fact that the performance, for one reason or another, might have been justifiably delayed and the beneficiary does not yet know whether or not there will in due course be full compliance with the contract. The requirement that he must, when making his demand for payment in order to support his request for an extension, also commit himself to claiming that the contract has not been complied with, may prevent some of the many abuses of the performance bond procedure that undoubtedly occur. (See the observation of Mr Justice Kerr (as he then was) in *RD Harbottle (Mercantile) Ltd* v *National Westminster Bank Ltd* [1978] QB 146 at p 150.)

For the reasons given by Ackner LJ, I think it is strongly arguable that on a strict interpretation of the terms of the performance guarantee in the instant case, require the second defendants to make a determination. The autonomous nature of such a type of guarantee, which is a frequent source of unfair calls by unprincipled beneficiaries, demands that the court should require strict compliance with its terms. The decision of the Court of Appeal in *Esal's* case[2] is, in my view, only an application of the established principle in documentary credits that all conditions must be strictly complied with. This approach does not detract from the other established principles that the beneficiary under an unconditional performance guarantee is entitled to payment on demand without having to prove a breach of the underlying contract by the customer. But he must satisfy the court that the demand complies strictly with the requirements of the guarantee.

In the present case, it is arguable that the words 'as determined by you in your absolute judgment' in the performance guarantee require the second defendants to make a determination before it can make a demand. Have they done so by merely stating that 'We believe WBE has failed ...'? There may be more than a semantic difference between saying: 'We have determined that WBE has failed ...' or 'As WBE has failed ...' (which in itself is a determination) and 'We believe that WBE has failed ...'. Counsel for the second defendants contends that belief is a stronger concept than a determination as a belief is 'a conviction of the truth of a proposition, existing subjectively in the mind induced by argument, persuasion or proof addressed to the judgment' (*Black's Law Dictionary*, 4th Ed). One meaning of belief is certainly a conviction of the truth of a proposition, however arrived at. Another meaning of belief is opinion as in the expression 'to the best of my belief'. In my view however, this argument is irrelevant because a determination is not a lower progression of belief or vice versa. The two words are conceptually different and they perform different functions. The word 'belief' expresses a state of mind (in this case that something is the case which does not necessarily lead the believer to act on it) whereas the word 'determination' expresses a conscious act of deciding that something is the case. A belief, however strong it may be, is not a determination in this sense, nor can the communication of that belief amount to a determination in the same sense. It is therefore arguable that since the second defendants did not in their demand notice indicate that they had made a determination but merely a belief, the demand notice did not comply with the requirements of the performance guarantee.

Accordingly, I am of the view that the first plaintiffs have raised an arguable issue on the validity of the second defendants' demand notice, but for the reasons I have given, they are not entitled to a continuation of the ex parte interlocutory injunction obtained against the first defendants or to a fresh injunction against the second defendants. The two applications are dismissed with costs.

*Applications dismissed.*

Solicitors: *Wee Swee Teow & Co*; *Rodyk & Davidson*; *Arthur Loke & Partners*.

Reported by *Terence Tan Bian Chye*

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## United Overseas Finance Ltd v Mutu Jeras

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 287 OF 1988
CHAN SEK KEONG J
20 APRIL 1989

*Land Law – Torrens system – Certificate of title not available – Equitable mortgage of land through deed of assignment – Caveat by mortgagee of land – Caveat expiry – Extension of caveat – Sale of land by mortgagor – Caveat by purchaser – Default by mortgagor – Priority between two caveats – Right of mortgagee to remove purchaser's caveat*

*Statutory Interpretation – Land Titles Act – Reference to book written by draftsman of statute – Reference to academic writers' opinions*

The plaintiffs were equitable mortgagees by virtue of a deed of assignment made between them as assignee and the original purchaser of two office units ('the units') as assignor. The plaintiffs lodged a caveat on 21 March 1983 against the units. By the deed of assignment, the original purchaser assigned all her rights and interest in the units comprised in two agreements for sale between the registered proprietor as vendor and herself as purchaser. By an agreement for sale and purchase, the original purchaser agreed to sell the units to the defendant. On 8 December 1983, the defendant lodged a caveat against the units. The caveatee named in the caveat was the original pur-

chaser but not the plaintiffs. Both the plaintiffs' and the defendant's caveats prohibited the registration of any instrument affecting the units unless the caveator consented in writing to such registration. The original purchaser and her husband defaulted in the repayment of the loan secured by the deed of assignment. The plaintiffs then obtained a court order for, inter alia, possession of the units. As between the original purchaser and the defendant, nothing had been done to complete the sale and purchase of the units. Later, the plaintiffs found a purchaser for the units who stipulated as a condition for their sale and purchase that prior to or at completion, all caveats lodged against the units must be removed. The plaintiffs' caveat expired on 21 March 1988. Prior to this, on 11 March 1988, the plaintiffs lodged a new caveat bearing the title 'Caveat extending to an existing caveat of similar interest' ('the extension caveat'). The plaintiffs started proceedings to have the defendant's caveat removed. The defendant argued that the plaintiffs were not caveatees for the purpose of s 111 of the Land Titles Act ('LTA'), as they had not been named as caveatees in the defendant's caveat and they had not been notified as such by the Registrar, and were therefore not entitled to start the present proceedings. It was also argued that the plaintiffs had lost their priority claim to the units by the lapsing of their caveat on 21 March 1988. The defendant claimed finally that the extension caveat was ultra vires; alternatively, it did not have the effect of continuing the priority of the plaintiffs' interests over the defendant's interests in the units.

**Held,** dismissing the application:

(1) The argument that the plaintiffs were not caveatees was rejected. The plaintiffs, as equitable mortgagees, were owners of an equitable interest in the units, and were thus within the definition of 'caveatee' in the LTA. The words 'to whom notice of the caveat is required to be given' in the definition of 'caveatee' suggests that there is a provision in the LTA that identifies the person to whom notice is to be given. However, s 105(1), the relevant provision, only refers to notice being given to the caveatee, thus making the definition of caveatee circuitous.

(2) Whatever the meaning of those words, there was no doubt that here, the plaintiffs were caveatees, they having lodged their caveat before the defendant lodged his. The Registrar thus had a duty to notify the plaintiffs of the defendant's caveat, and a breach of such duty by the Registrar could not deprive the plaintiffs of their status as caveatees.

(3) Although the plaintiffs had not been identified as caveatees in the defendant's caveat, any error or omission has no effect on the rights of the caveatee as s 104(3) does not require the caveatee to be identified. The prescribed Form 29 did require this identification but this was irrelevant.

(4) The plaintiffs thus were caveatees and had the locus standi to bring the application.

(5) There was a dispute between two writers, WJM Ricquier and Elizabeth Choo, as to whether or not a caveat that is extended loses its priority to a caveat lodged before the extension. The latter writer while agreeing with the former writer that the extended caveat loses its priority, argues that the loss of priority is only with respect to s 41 of the LTA but that priority under the general law is not lost. The court can therefore go on to use general principles to determine priority.

(6) The latter view was incorrect and the application of general law principles to determine relative priorities would only create more problems than it solves. The object of s 41(1) and s 104(1) was to put in place a system of caveats in substitution for the equitable doctrine of notice.

(7) The crux of the matter was whether s 41(4) should be construed to refer to a loss of priority to new caveators only but not to existing caveators who have already lost their priority to the caveator whose caveat has lapsed. To answer this question, it is necessary to ascertain the object of s 41(4) and to consider the comparative consequences giving it one effect or the other.

(8) Balmaan, the draftsman of the LTA, commented that it was not the intention of the legislature that s 41(4) should have the effect of defeating existing priorities statutorily decreed by s 41(1). The intention was to remove all stale and defunct claims from the land register.

(9) The consequence of holding that s 41(4) withdraws the priority of the first caveator against all other caveators, whether subsisting or new, is that it would have the effect of rewarding subsequent caveators not by virtue of any merit in their claims or their conduct but by events over which the competing caveators have no control as the lapsing of the caveat may be due to the delay of the developer, vendor or the competent authority in issuing the relevant certificates of title.

(10) The words 'Any priority conferred by this section is lost' in s 41(4) do not bear a literal or unqualified meaning or effect. If they do, the result would not only be absurd but could be disastrous. There would be serious repercussions in the financing of unregistered interests in registered land as no lender would be able to obtain a permanent security therein. The property market would come to a standstill for lack of institutional financing.

(11) For the above reasons, s 41(4) has to be construed to have effect consistent with, and no wider than, the mischief it was designed to prevent. That would mean construing it to limit the loss of priority to new caveators only but not subsisting caveators.

(12) Accordingly, the plaintiffs had not lost their priority to the defendant in respect of their claim either at the date of these proceedings or on the date of this judgment.

(13) Although the defendant had not gained priority over the plaintiffs it did not follow that the plaintiffs were entitled to remove the defendant's caveat. The plaintiffs had done nothing which necessitated such a course. Until the completion of the sale of the property, the defendant's caveat had as much right to be on the land register as any caveat of the plaintiffs.

(14) The problem was a practical one and could have been resolved by the plaintiffs and the defendant exchanging undertakings, one to pay the balance of the proceeds of sale (after satisfying their debt) to meet the defendant's claim and the other to withdraw his caveat upon payment of such balance or claim.

**Case referred to**

1 *Eng Mee Yong* v *Letchumanan* [1979] 2 MLJ 212 (refd)

**Legislation referred to**

Land Titles Act (Cap 157, 1985 Ed) ss 41(1), (4), 104(1), (3), 105(1), 107(2), 109(1), (4), 111(1)

*Lee Meng Mew* for the plaintiffs.

*David Fang* for the defendant.

*Foo Tuat Yien* (Miss) (Senior Deputy Registrar of Titles) for the Registrar of Titles and Deeds.

*Cur Adv Vult*

**Chan Sek Keong J:** On 7 December 1988, I dismissed the plaintiffs' application to remove the defendant's

caveat, and indicated to counsel that I would give my reasons later.

The plaintiffs, as equitable mortgagees by virtue of a deed of assignment dated 21 March 1983 made between them as assignee and the original purchaser as assignor, had on 21 March 1983 lodged a caveat No CV/76840 against two office units known as Units 501, 5th Floor Manhattan House (hereinafter called 'the said units'). By the said deed of assignment, the original purchaser had assigned to the plaintiffs all her right, title and interest in the said units comprised in two agreements for sale both dated 7 January 1980 made by the registered proprietor, viz Boon Ann Properties Co (Pte) Ltd, as vendor and herself as purchaser.

By an agreement for sale and purchase dated 8 November 1983, the original purchaser agreed to sell the said units to the defendant at the price of $612,000 for completion on the first anniversary of the signing of the agreement. Pursuant to cl 2 thereof, the defendant paid the sum of $61,200 as deposit to the original purchaser. On 8 December 1983, the defendant lodged a caveat No CV 92600 against the said units. The caveatee named in the caveat was the original purchaser but not the plaintiffs. Subsequently, by mutual agreement, the date of completion was postponed to the end of January 1985. Like the plaintiffs' caveat, the defendant's caveat prohibited the registration of any instrument affecting the said units unless the caveator consented in writing to such registration.

In July 1986 the original purchaser and her husband defaulted in the repayment of the term loan secured by the deed of assignment. The plaintiffs then commenced proceedings against them in Originating Summons No 789 of 1986 and obtained an order of court on 31 October 1986 for, inter alia, possession of the said units. Possession was given to the plaintiffs in January 1987. As between the original purchaser and the defendant, nothing had been done by either party to complete the sale and purchase of the said units since January 1985. In these proceedings, no explanation has been offered by the defendant why he has not taken steps to complete the purchase of the said units.

Sometime in December 1987 the plaintiffs found a purchaser for the said units who stipulated as a condition of the sale and purchase that prior to or at completion all caveats lodged against the said units must be removed. By 9 March 1988, the plaintiffs' solicitors appeared to have communicated with the defendant's solicitors regarding the defendant's caveat and on 15 March 1988 the plaintiffs' solicitors sent a letter to the defendant's solicitors requesting the withdrawal of the defendant's caveat failing which proceedings would be commenced. The present proceedings were not commenced until 22 March 1988 when, by that time, the plaintiffs' caveat having expired on 21 March 1988 had lapsed by virtue of s 109(1) of the Land Titles Act (Cap 157) ('LTA'). However, prior to the date of lapsing, the plaintiffs had on 11 March 1988 lodged a new caveat No EC/(CV/76840) bearing the title 'Caveat extending to an existing caveat of similar interest' ('the extension caveat').

Before me, the following issues were raised:

(1) Were the plaintiffs caveatees for the purpose of s 111 of the LTA so as to enable them to make the application?

(2) Have the plaintiffs lost their priority claim to the said units to the defendant by reason of the lapsing of the plaintiffs' caveat on 21 March 1988?

(3) Was the extension caveat ultra vires and if not did it have the effect of continuing the priority of the plaintiffs' interest over the defendant's interest in the said units?

*Who is a Caveatee?*

Counsel for the defendant submitted that the plaintiffs were not caveatees for the purpose of s 111(1) of the LTA as (1) they had not been named as caveatees in the defendant's caveat and (2) they had not been notified as such by the Registrar. In my view, these arguments had no merit. The statutory definition of 'caveatee' is the proprietor or other owner of land described in the caveat and to whom notice of the caveat is required to be given. 'Land' is defined to include 'any estate or interest in land'. The plaintiffs were owners of an equitable interest in the said units by virtue of the deed of assignment. The plaintiffs are therefore an owner of land for the purpose of the first part of the definition. The words 'to whom notice of the caveat is required to be given' suggest that there is a provision in the LTA which identifies those owners or claimants to whom notice must be given. Unfortunately, the relevant provision, ie s 105(1), refers only to notice being given to the caveatee, thus making the definition circuitous. In my view, these words cannot be intended as part of the definition of a caveatee. Whatever might be the meaning and effect of those words, there was, in this case, no doubt that the plaintiffs were a caveatee, they having lodged their caveat before the defendant lodged his caveat. That being the case, the Registrar was under a duty to notify the plaintiffs of the defendant's caveat. A breach of such duty could not deprive the plaintiffs of their status as caveatees.

The point that the plaintiffs had not been identified as caveatees in the defendant's caveat was also misconceived. The prescribed Form 29 requires the caveatees to be identified but any error or omission in the naming of the caveatees can have no effect on the rights of a caveatee as s 104(3) does not require the caveatee to be identified. The requirements of a valid caveat under s 104(3) are: (i) that it be signed by the caveator or his

solicitors; (ii) that it shall contain an accurate description of the interest claimed and (iii) a sufficient identification of the land intended to be affected. Form 29 as originally prescribed did not require the caveatee to be identified. For these reasons, I held that the plaintiffs were caveatees and had locus standi to bring this application.

*Priorities – Effect of lapse of caveat*

Counsel for the defendant submitted that the plaintiffs had lost their priority to the defendant when their caveat lapsed and that the extension caveat could not extend the lapsed caveat. It was further submitted that in any case the extension caveat was ultra vires. The provisions of the LTA relevant to the question whether the lapse of a caveat results in a loss of priority are ss 41(4), 107(2) and 109(1) and (4). They provide as follows:

> 41(1) Except in the case of fraud, the entry of a caveat protecting an unregistered interest in land under the provisions of this Act gives that interest priority over any other unregistered interest *not so protected at the time when the caveat was entered.* (Emphasis added)
>
> (4) Any priority *conferred by this section is lost* if the caveat or other instrument in respect of which it is claimed lapses, or is withdrawn, or is otherwise disposed of. (Emphasis added)
>
> 107(2) A caveat which is in order for entry in the land register at the date of lodgment of the caveat takes effect from that date.
>
> 109(1) A caveat lapses and ceases to affect land –
>
> (a) at the expiration of the period of 21 days (or of such further period as the Court may direct) from the date of notice given pursuant to section 108; or
>
> (b) at the expiration of 5 years from the date of lodgment of the caveat.
>
> (4) The lapsing of a caveat upon the expiration of 5 years as aforesaid does not prevent the lodgment of a fresh caveat in the same matter either during the currency of an existing caveat or otherwise.

One view of the combined effect of the above sections is that (see WJM Ricquier's *Land Law* (1985) at p 134):

> A caveat may be extended but priority will be lost, because the new caveat is effective from the date of the caveat.

ie priority is lost for all purposes and to all caveatees already on the register. Another writer (see Elizabeth Choo, 'Caveats – Two Questions' (1987) 29 Mal LR 219) has questioned the correctness of this view on the ground that no clear policy to that effect is reflected in the LTA and that s 41(4) itself is ambiguous with regard the ramifications of limiting the life of a caveat to five years. The writer then goes on to suggest when priority is lost upon the lapsing of a caveat, it is the priority conferred by s 41 that is lost but not the priority under the general law, so that the court may employ general law principles to determine if the first interest retains priority over the second interest on the ground that the former has the better equity. However, the writer does not go further to demonstrate the effect of applying such principles to a case where the first caveator may not necessarily have a better equity. Suppose the dates of creation of the interests of A, B and C are in the order of B, A and C and the order of lodgment of caveats is A, B and C. Upon the lapsing of A's caveat, does A have a better equity than B and/or C? If so, on what basis does A have a better equity? By virtue of equitable principles or the fact that he has lodged his caveat first but due to no fault of his, his caveat lapses first? Whatever the answer may be, and assuming that A lodges a fresh caveat, will the legal position be that the relative priorities of A, B and C for the next five years, are determined by equitable principles whilst the relative priorities between B and C for the same period continue to be determined by s 41(1)? In my view, the application of general law principles to determine the relative priorities of A and B will create more problems than it solves. Equity may not be past the age of child-bearing but this is not the occasion for the court to act as midwife.

The object of s 41(1) and s 104(1) of the LTA is to put in place a system of caveats in substitution for the equitable doctrine of notice. In the words of the Privy Council in *Eng Mee Yong* v *Letchumanan*[1] at p 214:

> The system of private caveats is substituted for the equitable doctrine of notice in English land law.

The LTA gives effect to this scheme of notice by providing in s 41(1) that the priority of unregistered interests in land, whenever created, is to be determined, except in a case of fraud, by the date of lodgment and not by the date of creation. Mere notice of a prior uncaveated interest is not fraud. The Torrens system, like equity, aids the diligent and not the indolent.

Section 41(4) provides, inter alia, that a caveat shall have effect for five years from the date of lodgment, and that 'Any priority conferred by this section is lost' when the caveat lapses. What did Parliament have in mind when it provided for a loss of priority in those terms? If the meaning of that phrase is clear and unambiguous, it should be given its plain meaning notwithstanding that the consequences may not be desirable. In my view, however, s 41(4) is not clear or unambiguous. It is capable of having a wider or a narrower scope depending on the facts at the time the caveat lapses. The statement that priority is lost does not specify to whom or which interest is lost. Although priority is the relative strength of competing interests, the second interest may be an existing interest or a future interest. The indirect effect of s 41(1) is that if A is the only caveator on the register he has priority over every other subsequent caveator, whether or not the interest of that caveator is created before or after that of A's. Suppose A is the only caveator on the land register when the caveat lapses by effluxion of time

or by his withdrawing it, he may be said to have lost priority to any other person ('O') who lodges a caveat before A is able to lodge a fresh caveat pursuant to s 109(4). In this situation, it is consistent with the terms of s 41(4) to say that A has lost his priority to any person who falls within the description of O. The same consequence will, of course, follow even if, to vary the situation, another caveator, B, is already on the register. A will still lose his priority to anyone who is O in like circumstances. The reason is that s 41(1) says that O has priority in such circumstances. However, in the second situation, it is not so clear that A, when his caveat lapses, will lose his priority to B. The reason lies in the peculiar wording of s 41(1) which provides that B will only have priority over A where, at the time B lodges his caveat, A's interest is not protected by a caveat. The relative priorities of A and B crystallized at the moment B lodges his caveat. In the first situation, the relative priority between A and O does not crystallize until O lodges his caveat and at that moment O may find himself having gained priority in accordance with s 41(1). In theory, B may also fall within the description of O when his caveat lapses and he files a fresh caveat before A files his fresh caveat.

In her article (at p 232), Miss Choo makes the self-evident point that:

> If the priority of the interest is lost in relation to another interest, it must mean that the other interest has gained priority.

The converse proposition is that A cannot lose priority to B unless B gains priority over A. If the converse proposition were applied to a situation, as in the instant case, where A and B are both caveators at the time A's caveat lapses, the logical result is that A cannot lose his priority because B cannot gain priority over A in terms of s 41(4). That is so because B can never say that A's interest was not protected by caveat. This historical fact can never be changed. Therefore even after the lapsing of A's caveat, B can never rely on s 41(1) to obtain priority over A so long as B's caveat subsists. He has to rely on some other provision in the LTA or the general law to give his interest priority. In the instant case, the general law, even if applicable, would not help the defendant as his interest was created after that of the plaintiffs. A is then left with only s 41(4). The defendant, in the present case, has relied on s 41(4) to contend that the plaintiffs lost their priority conferred by the section, ie by the lodgment of their caveat on 21 March 1985.

The crux of the matter is whether s 41(4) should be construed to refer to a loss of priority to new caveators only and not to existing caveators who have already lost their priority to the caveator whose caveat has lapsed. To answer this question it is necessary to ascertain the object of s 41(4) and to consider the comparative consequences of giving it one effect or the other.

First, the object. John Baalman, the draftsman of the LTA, in his commentary on the LTA, viz *The Singapore Torrens System* (1961) commented (at p 206):

> The automatic lapsing after five years will prevent the land register from becoming cluttered up with stale or defunct claims. Actually the caveator will come under a liability for compensation for allowing a stale claim to remain – s 101; and he should accordingly withdraw the caveat. This section will prove helpful where the caveatee has placed himself out of reach of proceedings.
>
> Automatic lapsing is based on the principle that a caveat is intended to be only a temporary form of relief, and that in the normal case the caveator's equity will have become a registered interest long before the five-year period has expired. Where that is not the case, a fresh caveat can be entered. In fact only an order of the court could restrain the entry of an unlimited number of caveats. That has been known to happen, where an eccentric individual was declared to be a vexatious litigant.

The above commentary makes it clear that it was not the intention of the legislature that s 41(4) should have the effect of defeating existing priorities statutorily decreed by s 41(1). The intention was to remove by operation of law all stale and defunct claims from the land register.

Secondly, the consequences. If s 41(4) withdraws the priority of A against all caveators, whether subsisting or new, then it has the effect of rewarding subsequent caveators on the register not by virtue of any merit in their claims or their conduct but by events over which the competing caveators have no control as the lapsing may be due to the delay of the developer or the vendor or even the competent authority in issuing the relevant certificates of title.

It should also be noted that s 41(4) is not confined to a case where a caveat lapses by effluxion of time. It also applies where the caveat or the instrument in respect of which it is claimed is withdrawn or disposed of. Thus, if the plaintiffs in this case had obtained a legal mortgage from the owner and had registered the same, the plaintiffs would have withdrawn their caveat, it having lost its function. But suppose the plaintiffs had, before the lapse of their caveat, sold the property to P and had assigned their right, title and interest in the property to P followed by a withdrawal of their caveat and the lodgment of a new caveat by P, what would have been the position of the plaintiffs vis-à-vis the defendant and the position of the defendant vis-à-vis P? The correct answer, in my view, must be that the exercise of the power of sale by the plaintiffs would have, in equity, destroyed the mortgagor's equity of redemption and with it all subsequent interests created by the mortgagor. All that the defendant would have been left with would be a claim to any surplus from the proceeds of sale. The purchaser, P, would have succeeded to the plaintiffs' interest and priority. In this situation, it is clear that the words 'Any priority conferred by this section is lost' do not bear a

literal or unqualified meaning or effect. If they do, the result would not only be absurd but could be disastrous. There would be serious repercussions in the financing of unregistered interests in registered land in Singapore as no lender would be able to obtain a permanent security therein. No financial institution would risk financing the purchase of buildings and houses in the course of development where, and this is the rule rather than the exception in Singapore, certificates of title are not ready for issue and may not be for more than five years from the dates of the lodgment of caveats. The property market could come to a standstill for lack of institutional financing. The Registrar of Deeds and Titles has, in this case, informed the court that up to 30 November 1988 more than 2,000 extension caveats have been filed.

For the above reasons, I was of the view that s 41(4) was to be construed to have effect consistent with, and no wider than, the mischief it was designed to prevent. That would mean construing s 41(4) to limit the loss of priority to new caveators only but not subsisting caveators. Such a construction is consistent not only with the wording of s 41(1) and also its object but also would avoid the absurd and undesirable consequences which flow from giving it a literal interpretation. Accordingly, I held, in the instant case, that the plaintiffs had not lost their priority to the defendant in respect of their claim to the said units either at the date of these proceedings or on the date when I gave judgment.

On the above reasoning, it must also follow that where two or more caveators are on the register at a time when any caveat lapses by effluxion of time, the priority given by that caveat can be extended by the caveator by filing a fresh caveat pursuant to s 109(4).

In view of the conclusion I have reached, it would not be necessary to decide whether the extension caveat was invalid on the ground that the statutory form, ie Form 29A was ultra vires the powers of the prescriptive powers of the Registrar. But I would like to make three observations. First, if the priority of the first caveator can be maintained by the lodging of a fresh caveat, I cannot see what function Form 29A can perform which cannot be performed by a fresh caveat. Secondly, if a caveator, upon the lapse of his caveat by effluxion of time, files an extension caveat in Form 29A instead of a fresh caveat in Form 29A, and if Form 29A were later found to be ultra vires the power of the Registrar, such a caveator may find the protection given by his extension caveat to be illusory. My third observation is in regard to the extension caveat in these proceedings. It contains a statement that it was lodged on 11 March 1988, ie 12 days before the expiration of the existing caveat. Section 109(4) is drafted in terms ('upon the lapsing ... a fresh caveat') which suggests that a new caveat may only be lodged *after* an existing caveat lapses but, *not before*. The purpose of allowing the extension caveat to be filed during the life of the preceding caveat was obviously to ensure that there would be no lapse of any moment of time between the lapsing of the preceding caveat and the commencement of the extension caveat. I can appreciate the laudable motive in this exercise but I am doubtful that it is permitted by s 109(4). If it were permissible, then in principle it should also be permissible for any caveator to lodge any number of extension caveats before the expiry dates of the preceding caveats. This, of course, will create the very same problem that the five year validity period was designed to avoid, ie the cluttering up of the land register. If it is said that the Registrar of Titles has the administrative power to control the indiscriminate filing of extension caveats, it ought to be remembered that the lodgment of a caveat, provided it complies with the statutory requirements, is a matter of right under the LTA.

As far as the plaintiffs' application was concerned, although I came to the conclusion that the defendant had not gained priority over the plaintiffs, I was also of the view that it did not follow that the plaintiffs were entitled to remove the defendant's caveat. The plaintiffs had done nothing hitherto which necessitated such a course. They had not entered into any binding agreement to sell the said units. Even if they had, there was no assurance that the purchaser would have completed the purchase. Until the completion of the sale of the property, the defendant's caveat had as much right to be on the land register as any caveat of the plaintiffs. The problem was a practical one and could have been resolved by the plaintiffs and the defendant exchanging undertakings, one to pay any balance of the proceeds of sale (after satisfying their debt) to meet the defendant's claim and the other to withdraw his caveat upon payment of such balance or claim. The plaintiffs' application was therefore premature and I dismissed it with costs.

*Order accordingly.*

Solicitors: *Wee Swee Teow & Co ; Singa Retnam & Fang.*

Reported by *Terence Tan Bian Chye*